VIRGINIA SECTION

PLEADING BY INITIALS.—An editorial in the American Law Review [1] some years ago called attention to what the editor correctly termed the slovenly habit prevalent among the lawyers of the South, of omitting Christian names of the parties in pleading, and substituting merely initials. Rightfully or wrongfully, the habit is asserted to have originated in Virginia, whence it spread throughout the Southern and to many of the Western States. As pointed out by the critic, pleading by initials violates the rule of accuracy in pleading, and is productive of much inconvenience in after years, in connection with judgments and decrees entered against defendants by their initials only. Those who have had experience in the tracing of titles to real property need no reminder of this. In the Northern and Eastern States the habit is believed not only not to prevail, but is not permitted by the courts. It is not permissible in the Federal courts.[2]

If a recent *dictum* of the Virginia Supreme Court should serve the good purpose of shocking the Virginia bar into better behavior in connection with the use of initials in their pleadings, the *dictum* will have served a quite useful purpose.

The case in question is *Richmond* v. *Gardner*.[3] The court here declares that a judgment docketed and indexed (it does not appear in what form the judgment was *originally entered*), against "Moon, Hawley & Co.," without more, is invalid as notice to subsequent purchasers of real property from the judgment debtors, because of the omission of the *"Christian"* names of the parties. In absence of statute permitting a partnership to be sued as a legal entity, and therefore in the firm name only, such a judgment as described is in itself void for uncertainty, even between the parties—as much so as would be a judgment against "Moon" or "Hawley", simply. And if a *judgment* in that form be invalid, it is clear that a *docketing* in that form is wholly ineffective as notice to subsequent purchasers. The real defect here was not so much in the *docketing* as in the *form of the judgment* itself. But there seems to have been no necessity in the principal case for the court to declare that the *"Christian"* names of the judgment debtors must appear, and that *initials are insufficient*. The court has obviously

[1] Reproduced in 4 Va. Law Reg. 782.

[2] "The description of him" (one of the parties) "by initials," says the Supreme Court of the United States (*per* Gray, J.), "is but an illustration of a loose and careless practice which this court does not countenance." Walton *v.* Marietta Chair Co., 157 U. S. 342 (1894). See Federal Equity Rule 25 (1). The authorities are collected in 31 Cyc. 96.

[3] 128 Va. 676 (1920).

used the term *"Christian"* names inadverently for *individual* names —the latter being the form in which the rule as to partners as defendants is usually expressed. If every judgment in Virginia, docketed only in the initialed surname of the defendant, instead of the Christian name, is to be regarded as undocketed, as the Court declares, the situation is indeed a serious one, and calls for prompt legislative intervention.

The probabilities are that more than one-half of the judgments and decrees standing today on the records of the Virginia courts do not indicate the Christian names of the defendants, but the initials only. If the Appellate Court means to cure the members of the bar of a bad habit (as one might well wish), it should hold them only for future conduct, after full notice. Perhaps this judicial outgiving may serve as such notice.

W. M. LILE.

INTEREST—INTEREST AS DAMAGES FOR NON-PAYMENT OF INTEREST DUE BY CONTRACT.—The rule early established in Virginia [1] and lately reaffirmed in the case of *Blanchard* v. *Dominion National Bank* [2] is that where, by the terms of a contract, interest falls due at a fixed date, and remains unpaid, there can be no recovery of interest by way of damages for such non-payment.[3] The decisions which establish this rule in Virginia do so arbitrarily. No sound basis for the holding is given; and we believe that there is none.

Interest upon interest is called "compound interest". Compound interest is not favored in the law, and so is not generally recoverable. The disallowance proceeds, not upon the ground of usury, but from motives of public policy, because of its harsh and oppressive character. It is not usury unless it exceeds the legal rate, but it tends toward usury.[4]

Though this is a well established principle, it admits of several equally well established exceptions. The better opinions refuse to enforce the rule when the reason for it disappears. The question, as confined to the instant case, comes down to this: Is it oppressive, does it tend toward usury, to allow simple interest by way of damages for non-payment of interest when due?

Clearly the answer is No. When an installment of interest falls due it becomes a simple debt. And it is axiomatic that justice de-

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[1] Fultz *v.* Davis, 26 Gratt. 903 (1875). See Childers *v.* Deane, 4 Rand. 406 (1826).

[2] 108 S. E. 649 (1921).

[3] Whether an agreement between the parties to pay such interest would alter the rule has never been finally settled in this State, though *dicta* can be found indicating that under certain circumstances such an agreement would be held enforceable. See Blanchard *v.* Dominion Nat'l Bank, *supra*.

[4] HALE ON DAMAGES, p. 263.